

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

CLIFFORD FAKE,

Petitioner

v.

WARDEN CAMERON, et. al.,

Respondents.

CIVIL ACTION NO. 3:CV-11-00227

(Judge Kosik)

FILED
SCRANTON

JUN 07 2011

PER

M. J. P.
DEPUTY CLERK

MEMORANDUM AND ORDER

AND NOW, this 7th day of June, 2011, IT APPEARING TO THE COURT
THAT:

(1) Petitioner, Clifford Fake, a prisoner confined at the State Correctional Institution at Cresson, Pennsylvania, filed the instant petition for writ of habeas corpus pursuant to 28 U.S.C. §2254 on February 1, 2011;

(2) In his petition, petitioner raises several claims including ineffective assistance of counsel and unlawful inducement of a guilty plea;

(3) The action was assigned to Magistrate Judge Thomas M. Blewitt for Report and Recommendation;

(4) On May 11, 2011, the Magistrate Judge issued a Report and Recommendation wherein he recommended that the petition for writ of habeas corpus be dismissed without prejudice;

(5) Specifically, the Magistrate Judge found that the petitioner failed to exhaust his remedies in state court and that no exception applied;

(6) Petitioner has failed to file timely objections to the Magistrate Judge's Report and Recommendation;

AND, IT FURTHER APPEARING THAT:

(7) If no objections are filed to a Magistrate Judge's Report and Recommendation, the plaintiff is not statutorily entitled to a de novo review of his claims. 28 U.S.C.A. §636(b)(1)(C); Thomas v. Arn, 474 U.S. 140, 150-53 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987);

(8) We have considered the Magistrate Judge's Report and we concur with his recommendation. After reviewing the record, we find that Petitioner admits that his appeal from his second PCRA petition is currently pending with the Pennsylvania Superior Court. We agree with the Magistrate Judge that the petitioner has failed to exhaust his state court remedies and that the petition should be dismissed.


ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) The Report and Recommendation of Magistrate Judge Thomas M. Blewitt dated May 11, 2011 (Document 9) is **ADOPTED**;

(2) The petitioner's petition for writ of habeas corpus is **DISMISSED** without prejudice;

(3) The Clerk of Court is directed to **CLOSE** this case and to forward a copy of this Memorandum and Order to the Magistrate Judge; and,

(4) Based on the court's conclusions herein, there is no basis for the issuance of a certificate of appealability.


Edwin M. Kosik
United States District Judge